

# Consumer Information and School Reporting

## CHAPTER 6

*This chapter describes information that a school must disclose to the public and report to the Department. This is information about: financial aid; the school's campus, facilities, student athletes, and gainful employment programs; as well as campus security and fire safety, drug and alcohol abuse prevention, and programs about them. The chapter also discusses counseling for students receiving FSA loans and disclosures that must be made for private education loans. Additional disclosure requirements that are specific to disbursements of FSA loans are described in Volume 4.*

### AVAILABILITY OF INFORMATION

#### Notice to enrolled students

Each year a school must distribute to all enrolled students a notice of the availability of the information it must provide in the following general categories:

- ◆ general disclosures for enrolled or prospective students,
- ◆ annual security report and annual fire safety report,
- ◆ report on athletic program participation rates and financial support data (Equity in Athletics Data or EADA), and
- ◆ FERPA information (Family Educational Rights and Privacy Act of 1974, discussed in *Chapter 7*).

The notice must list and briefly describe the information and tell students how to obtain it. It must be provided on an individual basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet or intranet website does not constitute a notice.

#### Consumer information

HEA Sec. 485(f); 20 USC 1092

Regulations: 34 CFR 668.41–49

Notice to enrolled students: 34 CFR 668.41(c)

Web dissemination: 34 CFR 668.41(b), (c)(2), (e)(2) through (4), and (g)(1)(ii)

Availability of school staff: 34 CFR 668.44

#### Sample notice of FERPA rights

You can find a sample notification at the Department's FERPA website.

<https://studentprivacy.ed.gov/resources/ferpa-model-notification-postsecondary-officials>

#### Assessing your school's compliance

To assess your school's compliance with the provisions of this chapter, see the FSA Assessment module for "Consumer Information," at

<https://ifap.ed.gov/ifap/byTopic.jsp?function=20>

### Suggestions for disseminating HEA-required information

The National Postsecondary Education Cooperative (NPEC) issued *Information Required to Be Disclosed Under the Higher Education Act of 1965: Suggestions for Dissemination* (NPEC 2010-831). This publication is available at <http://nces.ed.gov>.

Note: NPEC was established by the National Center for Education Statistics in 1995 as a voluntary organization comprising federal agencies, postsecondary schools, associations, and others with an interest in postsecondary education data collection. The information and opinions in NPEC publications do not necessarily represent the policy or views of the U.S. Department of Education.

### Civil penalty

In addition to limiting, suspending, or terminating the participation of any school that fails to comply with the consumer information requirements, the Department may impose civil fines of up to \$57,317 for each violation.

Civil penalty

Sec. 487(c)(3)(B) of the HEA

See the [February 1, 2019, Federal Register](#) for information about the adjustment of civil monetary penalties for inflation.

## Web dissemination

A school may meet the requirements for the general disclosures and the EADA, security, and fire safety reports by posting the information online.

- ♦ *Enrolled students or current employees*—the school may post the information on an Internet website or an intranet website that is reasonably accessible to its students and employees.
- ♦ *Prospective students or prospective employees*—the school may post the information on an Internet website.

A school that uses Internet or intranet disclosure for this purpose must include in its annual notice to enrolled students the exact electronic address of the information and a statement that the school will provide a paper copy of the information on request.

With Internet or intranet distribution of the security and fire safety reports to current employees, a school must distribute to them by October 1 of each year a notice that includes a statement of the reports' availability, the exact electronic address at which they are posted, a brief description of their contents, and a statement that the school will provide a paper copy of the reports upon request.

The same information must be included in a notice to prospective students and employees if a school decides to use the Web to provide annual security or fire safety reports to them. The difference is that there is no annual date for distribution of this notice; also note that the school must use an Internet, rather than an intranet, site.

### *Availability of employees for information dissemination purposes*

A school must designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining information on the school, financial assistance, graduation and completion rates, security policies, and crime statistics, as described in the following sections. If the school designates one person, he shall be available upon reasonable notice to any enrolled or prospective student throughout the normal administrative working hours of the school. If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available upon reasonable notice throughout the normal administrative working hours of the school.

The Department may waive this requirement if the school's total enrollment or the portion participating in the FSA programs is too small to necessitate an employee or group of employees being available on a full-time basis. The granting of a waiver does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements. The school must request this waiver from the Department.

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**Availability of Employees**

34 CFR 668.44

## GENERAL STUDENT DISCLOSURES

### General disclosures

General disclosures: 34 CFR 668.41(d)

Financial assistance: 34 CFR 668.42

Institutional information: 34 CFR 668.43

Completion/graduation rates: 34 CFR 668.45

Definitions: 34 CFR 668.41(a) and 668.47(b)

### Prospective student

One who has requested from an eligible school information about enrolling there or who has been contacted by the school directly, or indirectly through advertising, about enrolling.

### Explaining verification requirements

Although it is not among the financial aid disclosures given to all students, you should be aware of the following information that must be provided in writing to students who are selected for verification:

1. Documents required for verification.
  2. Student responsibilities—including correction procedures, deadlines for completing any actions required, and the consequences of missing the deadlines.
  3. Notification methods—how your school will notify students if their awards change as a result of verification and the time frame for such notification.
- 34 CFR 668.53

### Consumer information from the Department

The Department is required to make available to schools, lenders, and secondary schools descriptions of the FSA programs to assist students in gaining information through school sources, and to assist schools in carrying out the FSA program requirements.

We provide comprehensive student aid information to students and their families through the *Student Aid on the Web* site at <http://studentaid.ed.gov>.

Colleges and high schools may find student/borrower publications such as the College Preparation Checklist in the Financial Aid Toolkit  
<https://financialaidtoolkit.ed.gov/tk/resources.jsp>

Statutory requirement:  
HEA Sec. 485

A school must make the following information available to any enrolled or prospective student through appropriate publications, mailings, or electronic media.

### *Financial assistance available to students*

At a minimum, the school must publish and make readily available to current and prospective students a description of all the federal, state, local, private, and institutional need-based and non-need-based student financial assistance programs available to them.

For each of these financial aid programs, the information provided by the school must describe

- ♦ the procedures and forms by which students apply for assistance,
- ♦ the student eligibility requirements,
- ♦ the criteria for selecting recipients from the group of eligible applicants, and
- ♦ the criteria for determining the amount of a student's award.

The school may describe its own financial assistance programs by listing them in general categories.

The school must also describe the rights and responsibilities of students receiving financial aid (and specifically federal aid). This description must include

- ♦ criteria for continued student eligibility under each program,
- ♦ satisfactory academic progress (SAP) standards that students must meet to receive financial aid and criteria by which those who have failed to maintain SAP may re-establish aid eligibility (see *Volume 1*),
- ♦ the method by which financial assistance disbursements will be made to students and the frequency of those disbursements,
- ♦ the way the school provides for Pell-eligible students to obtain or purchase required books and supplies by the seventh day of a payment period (see *Volume 4* for conditions) and how the students may opt out.
- ♦ the terms of any loan received by students as part of their financial assistance package, a sample loan repayment schedule, and the necessity for repaying loans,

- ♦ the general conditions and terms applicable to any employment provided to students as part of their financial assistance package,
- ♦ the terms and conditions of the loans students receive under the Direct Loan Program, and
- ♦ the exit counseling information the school provides and collects as described later in this chapter. (Also see *Volume 6* for Perkins Loans exit counseling.)

### **Information about the school's academic programs, costs, facilities, and policies**

At a minimum, the school must provide to enrolled and prospective students the following information about itself

#### **Academic programs**

- ♦ the current degree programs and other educational and training programs
- ♦ the instructional, laboratory, and other physical facilities that relate to the academic programs
- ♦ the school's faculty and other instructional personnel
- ♦ any plans by the school to improve academic programs, upon a determination by the school that such a plan exists
- ♦ a description of the written arrangements it has entered into (See Written Arrangements in *Chapter 2*.)

#### **School costs**

- ♦ tuition and fees charged to full-time and part-time students
- ♦ estimates of costs for necessary books and supplies
- ♦ estimates of typical charges for room and board
- ♦ estimates of transportation costs for students
- ♦ any added cost of a program a student is enrolled in or inquires about.

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#### **Student access to accreditation/ approval documents**

The school must make available for review, upon request of any enrolled or prospective student, a copy of the documents describing the school's accreditation and its state, federal, or tribal approval or licensing.

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#### **College affordability website**

The Department's [College Affordability and Transparency Center](#) contains information for students, parents, and policymakers about costs at America's colleges. The website allows users to view schools by sector with the highest and lowest tuition and net prices (the price of attendance after considering all grant and scholarship aid). The site also includes the College Scorecard, which displays the typical student cost, graduation rate, loan default rate, and median borrowing amount for the school one types in. The site also links to the net price calculators for many schools and to the College Navigator website, which allows students to search for schools they might want to attend according to various criteria.

**Withdrawal procedures, refunds, and return of aid**

- ♦ the requirements and procedures for officially withdrawing from the school
- ♦ any refund policy with which the school is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the school
- ♦ a summary of the requirements for the return of FSA grant or loan funds (see *Volume 5*)

**Accreditation and licensure**

- ♦ the names of associations, agencies, or governmental bodies that accredit, approve, or license the school and its programs
- ♦ the procedures by which documents describing that activity may be reviewed—the school must make available for review to any enrolled or prospective student a copy of the documents describing its accreditation, approval, or licensing
- ♦ contact information for filing complaints with its accreditor, its state approval or licensing entity, and any other relevant state official or agency that would appropriately handle a student's complaint

**Disability**

- ♦ the services and facilities available to students with disabilities, including intellectual disabilities (see *Volume 1* for a definition)

**FSA eligibility for study abroad**

- ♦ a statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the FSA programs

**Transfer of credit policies**

- ♦ any established criteria the school uses regarding the transfer of credit earned at another institution
- ♦ a list of postsecondary schools with which the school has established an articulation agreement

## Contact information

- ♦ the titles of persons designated by the school to provide information to enrolled and prospective students and information regarding how and where those persons may be contacted

## Penalties and institutional policies on copyright infringement

- ♦ a statement that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities
- ♦ a summary of the penalties for violation of federal copyright laws (see the sample statement)
- ♦ a description of the school's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the school's information technology system
- ♦ the legal alternatives for downloading or otherwise acquiring copyrighted material, based on the school's periodic review described in *Chapter 7*. (This information is to be provided through a website or other means.)

### Copyright information

The sample statement and other copyright requirements are included in GEN 10–08. See *Chapter 7* for the requirement to develop copyright policies. 34 CFR 668.43(a)(10)

## Sample Statement of Penalties for Copyright Infringement

A school may use this sample statement to meet the requirement that it disseminate a summary of the penalties for violating federal copyright law. The use of this sample summary is optional.

### Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable

for civil copyright infringement may be ordered to pay either actual damages or “statutory” damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For “willful” infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys’ fees. For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense. For more information, please see the website of the U.S. Copyright Office at [www.copyright.gov](http://www.copyright.gov).



**Vaccination policy**

Schools must make available to current and prospective students information about their vaccination policy.  
HEA Sec. 485(a)(1)(V)

**Student activities**

- ♦ information, which must be easily accessible on the school's website, about the student activities the school offers

**Student body diversity**

- ♦ information about student body diversity, including the percentage of enrolled, full-time students who are (1) male, (2) female, (3) Federal Pell grant recipients, and (4) self-identified members of a major racial or ethnic group

**Net price calculator****Net Price Calculator**

HEA Sec. 132(h)(3) and (4)  
The Net Price Calculator Information Center at

<https://collegecost.ed.gov/netpricecenter.aspx>

provides the template as well as FAQs, a zipped file with links to other schools' calculators, and resources for schools to develop their own calculators. See also GEN-13-07.

All Title IV schools that enroll full-time, first-time degree- or certificate-seeking undergraduate students must have on their website a net price calculator. The net price is defined as the cost of attendance minus the average yearly grant and scholarship aid. The calculator provides estimated net price information to current and prospective students and should be based, as much as possible, on their individual circumstances.

ED's National Center for Education Statistics has developed a template that schools can use to create their own customized net price calculator, or they can develop their own calculator. If they develop their own, it must include at a minimum the same data elements found in the Department's calculator template.

Estimates produced by the net price calculator must be accompanied by a clear and conspicuous disclaimer stating that the estimate may change; that it does not represent a final determination or actual award; and that it is not binding on the Department, the school, or the state. The disclaimer must also include a link to the FAFSA website and state that students must complete the FAFSA to receive an actual Title IV financial aid award.

**The Financial Aid Shopping Sheet****Financial Aid Shopping Sheet**

See

<https://www2.ed.gov/policy/highered/guid/aid-offer/index.html>

for more information, including links to guidance and implementation resources, and see DCL GEN-13-26 and the Electronic Announcement of November 14, 2016 (revised January 13, 2017) for templates and specifications.

The Shopping Sheet is a resource to help consumers understand their educational costs and the aid available to meet those costs. It is a single page the Department developed that may be used as a stand-alone award letter or as a cover sheet with an institution's existing award letter. The standard format helps consumers easily compare the cost of attendance and aid awards across schools. Use of the Shopping Sheet is voluntary, though we encourage institutions to adopt it for their students. Also, for schools that receive federal funds under the military and veterans educational benefits programs, use of the Shopping Sheet helps meet a disclosure requirement of Executive Order 13607 (see the end of *Chapter 3*).



## COMPLETION, GRADUATION, TRANSFER, RETENTION, AND PLACEMENT RATES

Each year a school must determine the completion or graduation rate of its certificate- or degree-seeking, first-time, full-time undergraduate students and report it to the Department via the IPEDS website (see sidebar).

If the school's mission includes providing substantial preparation for students to enroll in another eligible school, it must also determine the transfer-out rate of its certificate- or degree-seeking, first-time, full-time undergraduate students.

The annual rates are based on the 12-month period that ended August 31 of the prior year. The rates will track the outcomes for students for whom 150% of the normal time for completion or graduation has elapsed. Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs. (See the IPEDS instructions for further details on calculating the rate.)

A school must make these annual rates available to the public no later than July 1. With requests from prospective students, the information must be made available prior to them enrolling or entering into any financial obligation with the school.

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### Retention rates

34 CFR 668.41c and 45

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### Reporting rates to IPEDS

The graduation, completion, and transfer-out rates are reported through the Department's Integrated Postsecondary Education Data System (IPEDS) website. The IPEDS survey is conducted by the National Center for Education Statistics (NCES). More information is at [www.nces.ed.gov/IPEDS](http://www.nces.ed.gov/IPEDS).

Survey forms, instructions, FAQs, worksheets, and other information are posted at

<https://surveys.nces.ed.gov/IPEDS/VisIndex.aspx>

Information can only be reported to this system by the school's designated "keyholder." Schools may change keyholders any time during the year by contacting the IPEDS Help Desk at 1-877-225-2568 or [ipedshelp@rti.org](mailto:ipedshelp@rti.org) or by contacting

Tara Lawley  
202-245-7081  
Team Lead, IPEDS Operations  
550 12th St SW  
Washington, DC 20202

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### College Navigator site

Note that your school's graduation rates are displayed on the IPEDS College Navigator site.

<http://nces.ed.gov/collegenavigator>

*Retention, placement, and post-graduate study***Optional calculations**

In addition to calculating the completion or graduation rate as described, a school may, but is not required to

1. calculate a completion or graduation rate for students who transfer into the school;
2. calculate a completion or graduation rate for students who have left school to serve in the armed forces, on official church missions, or with a foreign aid service of the federal government, such as the Peace Corps, or who are totally and permanently disabled; and
3. calculate a transfer-out rate, even if the school determines that its mission does not include providing substantial preparation for its students to enroll in another eligible school.

34 CFR 668.45(f)

The school must also provide information on

- ♦ its retention rate reported to IPEDS. The information must be made available to prospective students requesting it prior to them enrolling or entering into any financial obligation with the institution.
- ♦ the placement of, and types of employment obtained by, graduates of the school's degree or certificate programs. Placement rate information may be gathered from state data systems, alumni or student satisfaction surveys, the school's placement rate for any program, if it calculates such a rate, or other relevant sources. If the school calculates a placement rate, it must disclose that rate.
- ♦ for any 4-year program at the school, the types of graduate and professional education in which its graduates enroll. This information may be gathered from state data systems, alumni or student satisfaction surveys, or other relevant sources.

In the case of placement information and the types of graduate and professional education, the school must identify the source of the information as well as any time frames and methodology associated with it.

## DISCLOSURES AND GAINFUL EMPLOYMENT PROGRAMS

A school must disclose certain information about each of its gainful employment programs to prospective students in the format of the GE Disclosure Template.

Availability of the template is announced each year through an electronic announcement posted to IFAP.

The sidebar provides a link to the Gainful Employment page of IFAP where this electronic announcement, the Quick Start Guide providing instructions for using the GE Disclosure Template, as well the template itself, may be found.

An institution that offers a GE program in more than one program length must publish a separate disclosure template for each length of the program. Similarly, an institution that offers a GE program in more than one location or format (e.g., full-time, part-time, accelerated) may publish a separate disclosure template for each location or format if doing so would result in clearer disclosures.

### *Disseminating information about gainful employment programs*

For each program the school must include the required information in promotional materials it makes available to prospective students, and it must prominently display the information in a simple and meaningful manner on the homepage of the program's website. Any other webpage containing general, academic, or admissions information about the program must have a prominent and direct link to the single webpage that contains all the required information.

#### **GE disclosures**

34 CFR 668.412

#### **Additional information on IFAP**

The Gainful Employment page on IFAP includes links to frequently asked questions and resources such as electronic announcements, webinars, and regulatory materials.

<https://ifap.ed.gov/GainfulEmploymentInfo/indexV2.html>

#### **GE Disclosure Template (GEDT)**

Schools must use the GEDT-produced output code to post disclosure information to their gainful employment program webpages. The *GEDT Quick Start Guide* takes users through the steps to do that and can also be found at the following site.

[https://ope.ed.gov/GainfulEmployment/GEDT\\_Quick\\_Start\\_Guide.pdf](https://ope.ed.gov/GainfulEmployment/GEDT_Quick_Start_Guide.pdf)

34 CFR 668.412

#### **CIP & SOC codes**

The Classification of Instructional Programs (CIP) is a hierarchical (taxonomic) system used for classifying education programs to support the accurate tracking and reporting of fields of study and program completions activity.

The Standard Occupational Classification (SOC) system was created and is updated annually by the Standard Occupational Classification Policy Committee (SOCPC) in the Bureau of Labor Statistics. It is used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.

### Updating GE disclosure requirements

Schools must use the template provided by the Secretary to disclose information about each of their GE programs to enrolled and prospective students, and they must update the information in the template at least annually. The Department will identify the information that must be included in the template in a notice published in the *Federal Register*.

### Program webpages

On any webpage containing academic, cost, financial aid, or admissions information about a GE program maintained by or on behalf of a school, the school must provide the disclosure template for that program or a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program.

## CAMPUS CRIME AND SAFETY INFORMATION

### VAWA tools

The Department of Justice website [www.changingourcampus.org](http://www.changingourcampus.org) is an online clearinghouse of resources addressing sexual assault, domestic violence, dating violence, and stalking.

The Department of Education also has an online list of resources that might help schools with their sexual assault training and prevention:

<https://www2.ed.gov/documents/press-releases/suggested-resources.pdf>

### Crime and fire data on the Web

The campus crime and fire safety statistics for schools are at <http://ope.ed.gov/security/>.

Crime statistics are also on the College Navigator site <http://nces.ed.gov/collegenavigator/>.

A school must distribute annual campus security reports to its students and employees. If it maintains on-campus student housing, it must also disseminate an annual fire safety report. The reports that are disseminated to the school community must include descriptions of the school's policies, procedures, and programs. These reports must include the campus security and fire safety statistics reported to the Department each year (explained later in this section).

### Crime log

Schools must have policies that encourage complete, timely reporting of all crimes to the campus police and appropriate law enforcement agencies. If they have a campus police or security department, they must keep a written, easily understood, daily crime log. The log must list any crime by the date it was reported to the campus police or security department and that occurred within its Clery geography, as defined under *Definitions Related to Crime Reporting* in this Chapter. The log must also include the nature, date, time, and general location of each crime and the disposition of the complaint if known.

The school must make an entry or an addition to an entry to the log within two business days (Monday–Friday, except days when the school is closed) of the report of the information to the campus police or security department unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

A school may withhold one or more of the required pieces of information if there is clear and convincing evidence that the release of the information would

- ♦ jeopardize an ongoing criminal investigation or the safety of an individual,
- ♦ cause a suspect to flee or evade detection, or
- ♦ result in the destruction of evidence.

However, the school must disclose any information withheld for any of these reasons once the adverse effect is no longer likely to occur.

The school must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The school must make any portion of the log older than 60 days available within two business days of a request for public inspection.

### **Crimes to be reported**

A school must report to the Department and disclose in its annual security report statistics for the three most recent calendar years the number of each of the following crimes that occurred on or within its Clery geography (see *Definitions Related to Crime Reporting* later in this Chapter) and that are reported to local police agencies or to a campus security authority:

1. Primary crimes, including criminal homicide (murder, non-negligent manslaughter, and negligent manslaughter); sex offenses (rape, fondling, incest, and statutory rape); robbery; aggravated assault; burglary; motor vehicle theft; arson
2. Arrests and referrals for disciplinary actions, including arrests for liquor law violations, drug law violations, and illegal weapons possession and persons not arrested for one of those offenses but who were referred for campus disciplinary action
3. Hate crimes, including the number of each type of primary crime listed above that is determined to be a hate crime and the number of the following that are determined to be hate crimes: larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property
4. Dating violence, domestic violence, and stalking

### **Clery/Campus Security Act**

The full title of the Clery Act is the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. It has been amended several times, most recently by the Violence Against Women Reauthorization Act of 2013 (VAWA) enacted March 7, 2013. Among other provisions, VAWA requires institutions to compile statistics for certain crimes that are reported to campus security authorities or local police agencies, including incidents of sexual assault, domestic violence, dating violence, and stalking. These crime statistics must be reported to the Department through the web-based data collection. Schools must also include certain policies, procedures, and programs pertaining to these crimes in their annual security reports. Final regulations to implement these statutory changes to the Clery Act were published on October 20, 2014, and went into effect on July 1, 2015. See DCL GEN-15-15 for a summary of major changes to the Clery Act regulations. HEA Sec. 485(f)  
20 U.S.C. 1092(f)  
34 CFR 668.46

### **Crimes to be reported**

34 CFR 688.46(c)(1)

### **Citations**

Crime log: 34 CFR 668.46(f)  
Fire safety log: 34 CFR 668.49  
Missing persons: 34 CFR 668.46(h)  
Emergency response & evacuation: 34 CFR 668.46(g)

### *Reported crimes must be recorded*

A school must include in its crime statistics all crimes listed above occurring on or within its Clery geography that are reported to a campus security authority for the purpose of Clery Act reporting. Clery Act reporting does not require initiating an investigation or disclosing personally identifying information about the victim.

A school may not withhold or remove a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar noncampus official. But a school may withhold or remove a reported crime from its statistics when sworn or commissioned law enforcement personnel have fully investigated the reported crime and have made a formal determination that the crime report is false or baseless and therefore unfounded. Only sworn or commissioned law enforcement personnel may “unfound” a crime report for these purposes. The recovery of stolen property, the low value of stolen property, the refusal of the victim to cooperate with the prosecution, and the failure to make an arrest do not unfound a crime report.

A school must report to the Department and disclose in its annual security report statistics the total number of crime reports that were unfounded and subsequently withheld from its crime statistics.

## Definitions Related to Crime Reporting

**Clery geography**—For the purpose of collecting statistics on the crimes described under *Crimes to be reported* earlier in this chapter, Clery geography includes buildings and property that are part of the institution's campus, the institution's non-campus buildings and property, and public property within or immediately adjacent to and accessible from the campus. When recording crimes in the crime log, Clery geography includes, in addition to the locations above, areas within the patrol jurisdiction of the campus police or security department.

**Campus**—any building or property owned or controlled by a school within the same reasonably contiguous geographic area and used by the school in direct support of, or in a manner related to, its educational purposes, including residence halls.

**Noncampus building or property**—any building or property that is owned or controlled by

- a student organization officially recognized by the school or
- a school and that is used in support of its educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the school.

**On-campus student housing facility**—a dormitory or other residential facility for students that is located on a school's campus.

**Dating violence**—violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Domestic violence**—a felony or misdemeanor crime of violence committed by

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,

- a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies [under VAWA], or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Hate crime**—a crime reported to local police agencies or to a campus security authority that shows evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. In their recording, schools must identify the actual or perceived category of the victim that motivated the crime. The categories are: race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, and disability.

**Stalking**—engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

**Programs to prevent dating violence, domestic violence, sexual assault, and stalking**—

Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that

- are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and
- consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

These include both primary prevention and awareness programs aimed at incoming students and new employees, and ongoing prevention and awareness campaigns for current students and employees. See 34 CFR 668.46(j) for more information.



## Required Contents of Annual Campus Security and Fire Safety Reports

### *The Annual Security Report [34 CFR 668.46(b)] must include*

- (1) The crime statistics submitted to the Department (see the discussion under *Annual submission of campus security and fire safety statistics* later in this chapter).
- (2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—
  - Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in this chapter;
  - Policies for preparing the annual disclosure of crime statistics;
  - A list of the titles of each person or organization to whom students and employees should report criminal offenses for the purpose of making timely warning reports and the annual statistical disclosure; (See the discussion under *Crimes to be reported* later in this chapter for criminal offenses that must be reported); and
  - The policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
- (3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
- (4) A statement of current policies concerning campus law enforcement that—
  - Addresses the enforcement authority of security personnel, including their relationship with state and local police agencies, whether those security personnel have the authority to arrest individuals, and any agreements, such as written memoranda of understanding between the institution and such agencies, for the investigation of alleged criminal offenses;
  - Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies when the victim of a crime elects or is unable to make such a report; and
  - Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
- (5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
- (6) A description of programs designed to inform students and employees about the prevention of crimes.
- (7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.
- (8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of state underage drinking laws.
- (9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of federal and state drug laws.
- (10) A description of any drug or alcohol abuse education programs, as described in this chapter. For the purpose of meeting this requirement, an institution may cross-reference the materials it uses to comply with the requirements later in this chapter.
- (11) A policy statement about the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and about the procedures the institution will follow when these crimes are reported. The statement must include
  - A description of the institution's educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking [see 34 CFR 668.46(j)];
  - Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about
    1. The importance of preserving evidence that may help to prove that the alleged criminal offense occurred or to obtain a protection order;
    2. How and to whom the alleged offense should be reported;
    3. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to: notify those authorities, including on-campus and local police; be assisted by campus authorities in notifying law enforcement authorities; and decline to notify such authorities; and
    4. Where applicable, the rights of victims and the institution's responsibilities for orders of protection, "no-contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution;

### Required Contents of Annual Campus Security and Fire Safety Reports (continued)

- Information about how the institution will protect the confidentiality of victims and others, including how it will
    1. Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without using identifying information about the victim; and
    2. Keep confidential any protective measures for the victim, as long as that confidentiality would not impair the institution's ability to provide those measures;
  - A statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community;
  - A statement that the institution will provide written notification to victims about options for academic, living, transportation, and working situations or protective measures. The institution must make such accommodations if the victim requests them and they are reasonably available, regardless of whether he chooses to report the crime to campus police or local law enforcement;
  - An explanation of the procedures for institutional disciplinary action in cases of these alleged crimes [see 34 CFR 668.46(k)]; and
  - A statement that when students or employees report to the school that they have been a victim of dating violence, domestic violence, sexual assault, or stalking, the school will provide them a written explanation of their rights and options.
- (12) A statement advising the campus community where law enforcement agency information provided by a state under 42 USC 14071(j), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.
- (13) A description of the school's emergency response and evacuation procedures as discussed under *Emergency response and evacuation* later in this Chapter.
- (14) A statement of the school's policy regarding missing student notification procedures as described under *Missing persons procedures* later in this Chapter.

#### ***The Annual Fire Safety Report [34 CFR 668.49(b)] must include***

- (1) The fire statistics submitted to the Department.
- (2) A description of each on-campus student housing facility fire safety system.
- (3) The number of fire drills held during the previous calendar year.
- (4) The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.
- (5) The institution's procedures for student housing evacuation in the case of a fire.
- (6) The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.
- (7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.
- (8) Plans for future improvements in fire safety, if determined necessary by the institution.

### Sample Statement of Availability

Schools may use the following sample notice to inform students and employees of the availability of its Combined Annual Security Report and Annual Fire Safety Report:

Giant Capital City University is committed to assisting all members of the GCCU community in providing for their own safety and security. The annual security and fire safety compliance document is available on the GCCU website.

If you would like to receive the combined Annual Security and Fire Safety Report which contains this information, you can stop by the University Police Department at 6666 President Street, NW, Washington, DC, 20001 or you can request that a copy be mailed to you by calling (XXX) XXX-XXXX.

The website and booklet contain information regarding campus security and personal safety including topics such as: crime prevention, fire safety, university police law enforcement authority, crime reporting policies, disciplinary procedures and other matters of importance related to security and safety on campus. They also contain information about crime statistics for the three previous calendar years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by GCCU; and on public property within, or immediately adjacent to and accessible from the campus. This information is required by law and is provided by GCCU Police Department.

### Fire log

#### Fire safety

Fire safety requirements were added by the Higher Education Opportunity Act (HEOA) of 2008.

HEA 485(i)

34 CFR 668.49

A school that has any on-campus student housing facility must maintain a written, easily understood log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

The school must

- ♦ make an entry or an addition to an entry to the log within two business days of the receipt of the information,
- ♦ make the fire log for the most recent 60-day period open to public inspection during normal business hours, and
- ♦ make any portion of the log older than 60 days available within two business days of a request for public inspection.

A school must annually submit a copy of the fire safety statistics to the Department and include the fire safety statistics in its annual report to the campus community.

## ***Annual submission of campus security and fire safety statistics***

Each year, the Department sends a letter to the school's president or chief executive officer with information on accessing the Campus Safety and Security Survey website (<https://surveys.ope.ed.gov/security>), where schools submit statistics for the crimes described under *Crimes to be Reported* earlier in this Chapter, and for fire safety (see below) for the three most recent calendar years that have available data. The website explains how to tabulate these statistics. The letter contains any changes to the survey, the collection dates for the survey, the name of the person who completed the reporting (the campus safety survey administrator) at the school the previous year, and a new ID and password for completing the survey.

Schools with any on-campus student housing facility must submit annual fire safety statistics to the Department. The report must include statistics on the number and causes of fires, as well as fire-related injuries, death, and property damage for each on-campus student housing facility. The fire safety statistics are due at the same time as the crime statistics.

### **Bookstores and safety reporting**

If a school contracts with an entity to provide bookstore services and the bookstore is located on-campus, or if it is in any off-campus building or property owned or controlled by the school, the school must include the bookstore among the locations for which it reports campus crime and safety information as provided in 34 CFR 668.46.

### **Handbook for Campus Crime Reporting**

To assist schools in fully complying with the Clery Act, the Department has developed *The Handbook for Campus Safety and Security Reporting*. The handbook defines the categories of crime and procedures for reporting them, as well as the requirements for timely warnings and maintenance of a daily crime log.

*The Handbook for Campus Safety and Security Reporting* also covers fire safety and the required fire safety log. The handbook is available at

<https://ifap.ed.gov/eannouncements/attachments/HandbookforCampusSafetyandSecurityReporting.pdf>

### *Distributing security and fire safety reports to enrolled students and current employees*

By October 1 of each year, a school must distribute to all enrolled students and current employees its annual security report and fire safety reports through appropriate publications and mailings including

- ♦ direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;
- ♦ a publication or publications provided directly to each individual; or
- ♦ posting on an Internet or intranet website (see conditions for Web distribution at the beginning of this chapter).

The two reports can be published together or separately. If published together, the title of the document must clearly state that it contains both the Annual Security Report and the Annual Fire Safety Report. If published separately, each report must contain information on how to directly access the other report.

### *Disseminating reports to prospective students and employees*

For each of the reports, the school must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. A school must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee.

If the school chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet website, the school must follow the procedures for Web dissemination described earlier.

### *Missing persons procedures*

A school that provides on-campus student housing must establish a missing student notification policy and include a description of the policy in its annual security report to the campus community. The policy must

- ♦ include a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- ♦ require that any missing student report be referred immediately to the school's police or campus security department (if the school doesn't have such a department, it must refer the report to the local law enforcement agency that has jurisdiction in the area); and
- include an option for each student to identify a contact person or persons whom the school shall notify within 24 hours of a determination (by the school's police or campus security department or the local law enforcement agency) that the student is missing.

Students must be advised that

- ♦ their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;
- ♦ if they are under 18 years of age and not emancipated, the school must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and
- ♦ the school will notify the local law enforcement agency within 24 hours of the determination that the student is missing unless the local law enforcement agency was the entity that made the determination that the student is missing.

When a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours, the school must notify within 24 hours

- ♦ the contact person (if the student has designated one), and
- ♦ the student's custodial parent or guardian (if the student is less than 18 years old and is not emancipated).

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#### **Missing persons procedures— private right of action**

The requirements for a school to establish missing persons procedures do not provide a private right of action to any person to enforce a provision of the subsection or create a cause of action against any institution of higher education or any employee of the institution for any civil liability. HEA section 485(j)

**Publicizing procedures**

The school must publicize its emergency response and evacuation procedures in conjunction with at least one test per calendar year. The school must document each test with a description of the exercise, stating the date and time, and indicating whether it was announced or unannounced.

**Definition of “test”**

Regularly scheduled drills, exercises, and appropriate follow-through activities designed for assessment and evaluation of emergency plans and capabilities.

In all cases, the school must inform the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

***Emergency response and evacuation***

A school must develop emergency response and evacuation procedures and include a description of its procedures in its annual security report to the campus community.

A school must develop procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.

At a minimum, schools must have procedures to

- ◆ confirm that a significant emergency or dangerous situation (as described above) exists;
- ◆ determine the appropriate segment or segments of the campus community to receive a notification, the content of the notification; and to initiate the notification system;
- ◆ disseminate emergency information to the larger community; and
- ◆ test the emergency response and evacuation procedures on at least an annual basis, including announced or unannounced tests.

The school must compile a list of the titles of those persons or organizations responsible for determining whether an emergency or dangerous situation exists and who are authorized to initiate the notification process and include this information in the annual report.

In an emergency or a dangerous situation, a school must, without delay and accounting for the safety of the community, determine the content of the notification and initiate the notification system unless issuing a notification will, in the judgment of responsible authorities, compromise efforts to assist a victim or contain, respond to, or otherwise mitigate the emergency.



### *Timely warning and emergency notification*

A school must, in a manner that is timely and that withholds as confidential the names and other identifying information of victims, and that will aid in the prevention of similar crimes, report to the campus community on crimes that are

- ♦ included in its campus crime statistics (see the discussion under *Crimes to be Reported* earlier in this Chapter), or
- ♦ reported to local police agencies or to campus security authorities (as identified under the school's statement of current campus policies), and
- ♦ considered by the school to represent a threat to students and employees.

A school is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

If there is an immediate threat to the health or safety of students or employees occurring on campus, a school must follow its emergency notification procedures. A school that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the school must provide adequate follow-up information to the community as needed.

## DRUG AND ALCOHOL ABUSE PREVENTION

### Drug and alcohol abuse prevention programs

These requirements are found in 34 CFR 86—Drug and Alcohol Abuse Prevention. The regulations published in the *Federal Register*, August 16, 1990, offer a number of suggestions for developing a drug prevention program.

### Drug-Free Workplace

The FSA requirements are derived from the 1989 Amendments to the Drug-Free Schools and Communities Acts of 1986 and 1988. See Public Law 101-226.

Because a school applies for and receives its Campus-Based allocation directly from the Department, the school is considered to be a federal grant recipient and as such is required to make a good faith effort on a continuing basis to maintain a drug-free workplace.

34 CFR Part 84

Also see the Drug-Free Workplace Act of 1988 (Public Law 101-690)

### Drug and alcohol prevention

Drug-Free Schools and Communities Act (Public Law 101-226)

Drug-Free Workplace Act of 1988 (Public Law 101-690)

34 CFR 84 Government-Wide Requirements for Drug-Free Workplace

34 CFR 86 Drug and Alcohol Abuse Prevention

34 CFR 668.14(c)

### Failure to have a prevention program

34 CFR 86.301

### Notice of penalties

A school must provide to every student upon enrollment a separate, clear, and conspicuous written notice with information on the penalties associated with drug-related offenses. For students who have lost Title IV eligibility due to drug convictions, the school must provide a separate, clear notice of the loss and how to regain eligibility. See *Volume 1* of the Handbook for information about losing and regaining eligibility in these cases.

HEA section 485(k)

A school that participates in the FSA programs must provide to its students, faculty, and employees information to prevent drug and alcohol abuse, and it must also have a drug and alcohol prevention program, as discussed later.

In addition, a school that participates in the Campus-Based Programs must have a drug-free awareness program for its employees that includes a notice to them of unlawful activities and the actions the school will take against an employee who violates these prohibitions.

### Information to be included in drug prevention materials for students and employees

A school must provide the following in its materials:

- ♦ Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of drugs and alcohol by students and employees on the school's property or as part of the school's activities
- ♦ A description of the sanctions under local, state, and federal law for unlawful possession, use, or distribution of illicit drugs and alcohol
- ♦ A description of any drug and alcohol counseling, treatment, or rehabilitation programs available to students and employees
- ♦ A description of the health risks associated with the use of illicit drugs and alcohol
- ♦ A clear statement that the school will impose sanctions on students and employees for violations of the standards of conduct (consistent with local, state, and federal law) and a description of these sanctions, up to and including expulsion, termination of employment, and referral for prosecution

### Distribution of materials to all students and employees

The school may include this information in publications such as student or employee handbooks, provided that these publications are distributed to each student and employee. Merely making drug prevention materials available to those who wish to take them is not sufficient. The school must use a method that will reach every student and employee, such as the method used to distribute grade reports or paychecks.

The school must distribute these materials annually. If new students enroll or new employees are hired after the initial distribution for the year, the school must make sure that they also receive the materials.

## Drug and alcohol abuse prevention program

Every participating school must certify that on the date it signs the Program Participation Agreement it has a drug and alcohol abuse prevention program in operation that is accessible to any officer, employee, or student at the school. The program adopted by the school must include an annual distribution to all students, faculty, and staff of information concerning drug and alcohol abuse and the school's prevention program.

A school must review its program once every two years to determine its effectiveness and to ensure that its sanctions are being enforced. As a part of this biennial review, the school must determine

- ♦ the number of drug and alcohol-related violations and fatalities that occur on a school's campus or as part of any of the school's activities and that are reported to campus officials; and
- ♦ the number and type of sanctions that are imposed by the school as a result of drug and alcohol-related violations and fatalities on the school's campus or as part of any of the school's activities.

The school must make available upon request the results of the review as well as the data and methods supporting its conclusions.

If a school does not certify that it has a prevention program or fails to carry out a prevention program, the Department may terminate any or all forms of federal financial aid to the school and may require it to repay any or all federal financial aid that it received while not in compliance.

## Drug-Free Workplace requirements for Campus-Based schools

A school that participates in the Campus-Based Programs must take certain steps to provide a drug-free workplace, including

- ♦ establishing a drug-free awareness program to provide information to employees,
- ♦ distributing a notice to its employees of prohibited unlawful activities and the school's planned actions against an employee who violates these prohibitions, and
- ♦ notifying the Department and taking appropriate action when it learns of an employee's conviction under any criminal drug statute.

A school's administrative cost allowance may be used to help defray related expenses, such as the cost of printing informational materials given to employees. The administrative cost allowance is discussed in *Volume 6: Campus-Based Programs*.

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### Additional sources of information

The following resources are available for schools that are developing prevention programs:

The Drug-Free Workplace Helpline—  
Provides information to private entities about workplace programs and drug testing. Proprietary and private nonprofit schools may call this line (1-800-967-5752).

[www.samhsa.gov/workplace](http://www.samhsa.gov/workplace)

Substance Abuse & Mental Health Services Administration—SAMHSA (U.S. Department of Health & Human Services)  
Treatment and Referral Hotline  
1-800-662-HELP (1-800-662-4357)

Publications:

<http://store.samhsa.gov/home>

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### Measuring the effectiveness of prevention programs

The effectiveness of a school's prevention program may be measured by tracking the number of drug- and alcohol-related disciplinary actions, treatment referrals, and incidents recorded by campus police or other law enforcement officials.

You may also find it useful to track the number of students or employees attending self-help or other counseling groups related to alcohol or drug abuse and to survey student, faculty, and employee attitudes and perceptions about the drug and alcohol problem on campus.

The drug-free workplace requirements apply to all offices and departments of a school that receives Campus-Based funds. Organizations that contract with the school are considered subgrantees not subject to the requirements of the Drug-Free Workplace Act.

## INFORMATION ABOUT ATHLETICS

### *The EADA Report*

The Equity in Athletics Disclosure Act (EADA) requires a school that has an intercollegiate athletic program to make prospective students aware of its commitment to providing equitable athletic opportunities for its male and female students. As part of this requirement, each fall schools must make certain information available to students, prospective students, and the public in easily accessible places and must also report the information to the Department. The annual report, officially called *The Report on Athletic Program Participation Rates and Financial Support Data* and commonly referred to as the EADA Report, must include information on

- ♦ the number of male and female full-time undergraduate students that attended the school (undergraduate students are those who are consistently designated as such by the school),
- ♦ the total amount and ratio of athletically related student aid awarded to male athletes compared to female athletes,
- ♦ the expenses incurred by the school for men's and women's sports,
- ♦ total annual revenues for men's or women's sports,
- ♦ the annual school salary of non-volunteer head coaches and assistant coaches for men's and women's teams, and
- ♦ for each varsity team in intercollegiate competition, the number and gender of participants and coaches, operating expenses, etc.

A school must publish its EADA report by October 15 and make it available upon request to students, prospective students, and the public. For example, a school may make hard copies of the report available in intercollegiate athletic offices, admissions offices, or libraries, or by providing a copy to all students in their electronic mailbox.

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#### **Equity in Athletics Disclosure Act (EADA)**

HEA Section 485(e) and (g)  
20 USC 1092  
34 CFR 668.41(g)  
34 CFR 668.47

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#### **EADA data on the Web**

The Department posts the EADA reports for participating schools on the Web at <http://ope.ed.gov/athletics/>.

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#### **Definitions**

*Undergraduate students*—For purposes of §668.45 and 668.48 (completion and graduation rates for students and student athletes) only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.  
34 CFR 668.41(a)

*Certificate or degree-seeking student*—a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

A school must provide the report promptly to anyone who requests the information. For example, a school may not refuse to provide a copy of the report to the news media, and the school may not require an individual requesting the information to come to the school to view the report. A school may not charge a fee for the information.

A school must submit its equity in athletics report to the Department via the EADA survey website (<https://surveys.ope.ed.gov/athletics>) annually within 15 days of making it available to students, prospective students, and the public. Note that a password and user ID are required for use of this website. They are sent by the Department to the chief administrator at the school. For help with this site, contact [eadahelp@westat.com](mailto:eadahelp@westat.com).

For specific categories and reporting rules, please see the EADA User's Guide for the online survey.

### **Completion and graduation rates for student athletes**

As part of their EADA disclosures, schools that offer athletically related student aid must produce an annual report that includes the following:

- ♦ The number of students, categorized by race and gender, who attended the school in the year prior to the submission of the report.
- ♦ The number of the students above who received athletically related student aid, categorized by race and gender within each sport.
- ♦ The completion or graduation rate and, if applicable, transfer-out rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in 34 CFR §668.45(a)(1), categorized by race and gender.
- ♦ The completion or graduation rate and, if applicable, transfer-out rate of the entering students described in §668.45(a)(1) who received athletically related student aid, categorized by race and gender within each sport.
- ♦ The average completion or graduation rate and, if applicable, transfer-out rate for the four most recent completing or graduating classes of entering students described in §668.45(a)(1), (3), and (4), categorized by race and gender. If a school has rates for fewer than four of those classes, it must disclose the rates it has.

### **Waiver of completion/graduation data calculation**

A school does not have to calculate and make available its completion or graduation rate (and, if applicable, transfer-out rate) if it is a member of an athletic association or conference that has voluntarily published completion or graduation rate data or has agreed to publish data and the Department has granted a waiver of the requirements to provide these rates to coaches and guidance counselors.

To receive a waiver, your school or its athletic association or conference must submit a written application to the Department that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

Even if the waiver is granted, your school must comply with the requirements of §668.41(d)(3) (upon request, providing its retention rate to a prospective student) and (f) (providing retention rates and completion or graduation rates for prospective student athletes and their parents, high school coach, and guidance counselor).  
34 CFR 668.45(e)(1)

### **Exception to providing completion/graduation rates for student athletes**

A school does not have to provide a report on completion or graduation rates to the prospective student athlete and the athlete's parents, high school coach, and guidance counselor, if

- the institution is a member of a national collegiate athletic association,
- the association compiles data on behalf of its member institutions, which the Department determines are substantially comparable to those required by §668.48(a), and
- the association distributes the compilation to all secondary schools in the United States.

34 CFR 668.41(f)

- ♦ The average completion or graduation rate and, if applicable, transfer-out rate of the four most recent completing or graduating classes of entering students described in §668.45 (a)(1) who received athletically related student aid, categorized by race and gender within each sport. If a school has rates for fewer than four of those classes, it must disclose the rates it has.

A school must provide this report to prospective student athletes, their parents, high school coach, and guidance counselor (see the sidebar exception).

The definition of athletically related student aid used here is the same definition that is also used for the EADA disclosure requirements. The definitions of certificate- or degree-seeking students, first-time undergraduate students, undergraduate students, and normal time are the same as those used for the calculation of completion or graduation and transfer-out rates for a school's general student body cohort.

## TEXTBOOK INFORMATION

To the maximum extent practicable, a school must post verified textbook pricing information for both required and recommended materials for all classes (i.e., not just the school's online classes) on the schedule that the school has posted online.

This pricing information must include the International Standard Book Number (ISBN) and retail price for all required and recommended textbooks and supplemental materials for each course listed in the institution's course schedule used for preregistration and registration. If the ISBN is not available, the pricing information must include the publisher and copyright date, as well as the title and author. If the school determines that disclosure of this pricing information is not practicable, it may substitute the designation "To Be Determined (TBD)" in lieu of the required pricing information.

If applicable, the school must include on its written course schedule a reference to the textbook information available on its Internet schedule and the Internet address for that schedule.

Schools are encouraged to provide information on renting textbooks, purchasing used textbooks, textbook buy-back programs, and alternative content delivery programs.

A school must provide the following information to its bookstore if the bookstore requests it

- ♦ the school's course schedule for the subsequent academic period; and
- ♦ for each course or class offered, the information it must include on its Internet course schedule for required and recommended textbooks and supplemental material, the number of students enrolled, and the maximum student enrollment.

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### Textbook information

The statutory requirement regarding textbook disclosures was described in DCL GEN-08-12. Further guidance was given in GEN-10-09. Also note that the law requires textbook publishers to provide information to faculty about pricing, copyright dates of previous editions, content revisions, alternate formats, etc. HEA section 133



## LOAN COUNSELING

### Loan counseling and disclosures to borrowers

DL: 34 CFR 685.304

Perkins: 34 CFR 674.16(a)

See also DCL GEN-16-05 about the Perkins Loan Extension Act of 2015 for Perkins disclosures in addition to those in the regulation cited above.

### Loan counseling materials

Schools can find counseling materials, such as the entrance and exit counseling guides, in the Financial Aid Toolkit ([FinancialAidToolkit.ed.gov/resources](http://FinancialAidToolkit.ed.gov/resources)).

### Alternative entrance counseling approaches

The DL regulations explain how a school may adopt alternative approaches as a part of its quality assurance plan; see 34 CFR 685.304(a)(8).

### Special PLUS loan counseling

Special loan counseling is required for any PLUS Loan applicant, student or parent, who has an adverse credit history but who qualifies for a PLUS Loan either by getting a loan endorser or being reconsidered due to extenuating circumstances. While the counseling is mandatory only for these borrowers, the Department offers voluntary counseling for all PLUS borrowers. See 34 CFR 685.200(b)(5) and (c)(2)(viii), and the January 27, 2015 electronic announcement on “Early Implementation of Changes in Regulations for Adverse Credit History Under the Direct Loan Program.”

Note that the special counseling described above is separate from the entrance counseling that all graduate and professional student PLUS Loan borrowers must complete in accordance with 34 CFR 685.304(a)(2) and the electronic announcement from January 27, 2015.

### Entrance counseling

Entrance counseling is required for all first-time student Direct Loan borrowers. Before making the first disbursement of a Direct Subsidized or Unsubsidized Loan to a borrower who has not received a prior Direct Subsidized or Unsubsidized Loan or Federal Stafford or SLS Loan, you must ensure that he receives entrance counseling. Similarly, you must ensure that a graduate or professional student who is borrowing a Direct PLUS Loan has received entrance counseling, unless he received a prior graduate/professional Direct or Federal PLUS Loan. Entrance loan counseling is recommended but not required for parent PLUS borrowers except as explained in the margin. For information on counseling requirements for the TEACH Grant program, please see the sidebar on TEACH Grant Counseling found next to the discussion under TEACH exit counseling later in this chapter.

You may not require that students complete additional counseling.

As a condition for receiving a Direct Loan, you may include in your entrance counseling more material and information than that required in the regulations (in the discussion under *DL Entrance Counseling—Required Elements* later in this chapter). This extra content can be provided as part of in-person individual or group training or through your website, other electronic means, written materials, or different methods. The added material must be reasonable as to time, effort, and relevance to students’ borrowing decisions and may not be administered in a way that unreasonably impedes their ability to borrow. So you can require that students take a test or evaluation of what they learned in counseling, but you cannot establish a passing score that they must get to receive a Direct Loan. You can require first-time student borrowers to complete a worksheet, budget, or other exercise designed to improve financial literacy and understanding of the implications of borrowing, but you cannot require them to justify the need for a loan.

As part of your entrance counseling policy for first-time student borrowers, you may require them to participate in a workshop, loan orientation presentation, or similar activity, but the timing and other conditions of the activity must be reasonable so that students are able to receive their loan funds in a timely manner. See DCL GEN-15-06 for more information.

## Exit counseling

A Perkins Loan borrower or Direct Loan student borrower who is graduating, leaving school, or dropping below half-time enrollment is required to complete exit counseling. If the borrower drops out without notifying your school, you must confirm that he has completed online counseling or mail exit counseling material to him at his last known address. It is also acceptable to email the information to his home (not school) email address if you have it. The print or PDF version of the *Exit Counseling Guide for Federal Student Loan Borrowers* satisfies this requirement for Direct Loan student borrowers. Whatever material you use, you must mail or email it within 30 days of learning that the borrower has withdrawn or failed to participate in an exit counseling session.

When mailing exit materials to students who have left school, you're not required to use certified mail with a return receipt requested, but you must document in their file that the materials were sent. If they fail to provide updated contact information, you are not required to take further action.

## Providing borrower information at separation

Personal information collected for exit counseling provided by the school must be given to students' loan servicer within 60 days. Students authorize their school to release information to lenders in the loan promissory note they signed. No further permission is needed. Students who complete loan exit counseling online at **www.studentloans.gov** fulfill this requirement; NSLDS provides the completion information to the loan holders.

## Counseling methods

The Direct Loan Program offers both entrance and exit counseling on the Web for students. There is PLUS Loan credit counseling for parents and graduate students as well. Your school may also elect to provide entrance counseling through an in-person session or by providing a separate written form to the student that she signs and returns to the school.

If your staff are conducting in-person counseling sessions, charts, handouts, audiovisual materials, and question-and-answer sessions can help convey the information in a more dynamic manner. We also recommend the use of written tests or interactive programs to ensure that the student understands the terms and conditions of his loans.

Regardless of the counseling methods your school uses, it must document that the student received entrance and exit counseling, and it must ensure that an individual with expertise in the FSA programs is reasonably available shortly after the counseling to answer the student's questions.

### Updating borrower information

A Direct Loan school should send updated borrower information obtained during school-provided exit counseling to the federal loan servicer to whom the loan has been assigned.

### DL Online Counseling

Students can take loan entrance and exit counseling at <https://studentloans.gov>. PLUS Loan Credit counseling for parents and graduate students is also available.

Note that PLUS Loan credit counseling is only available at **StudentLoans.gov**.

Your school will receive notification (via SAIG) of online loan counseling completed by borrowers.

Completed loan counseling can also be viewed on the COD website at **<https://cod.ed.gov/>**.

If your school documents that borrowers have completed the Department's online counseling, it has satisfied its responsibility for electronic counseling.

## DL Entrance Counseling—Required Elements

### ***Entrance counseling for Direct Subsidized and Unsubsidized Loans 34 CFR 685.304(a)(6)***

Entrance counseling for Direct Subsidized and Unsubsidized loan borrowers must:

- (i) Explain the use of a master promissory note (MPN);
- (ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;
- (iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under federal law, and litigation;
- (iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;
- (v) Inform the student borrower of sample monthly repayment amounts based on—
  - (A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the borrower has obtained; or
  - (B) The average indebtedness of other borrowers in the same program at the same school as the borrower;
- (vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;
- (vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;
- (viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;
- (ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;
- (x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;
- (xi) Provide information on the National Student Loan Data System (NSLDS) and how the borrower can access the borrower's records;
- (xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan; and
- (xiii) For first-time borrowers, explain the limitation on eligibility for Direct Subsidized Loans and possible borrower responsibility for accruing interest, including—

- (A) The possible loss of eligibility for additional Direct Subsidized Loans;
- (B) How a borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are calculated;
- (C) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans; and
- (D) The impact of borrower responsibility for accruing interest on the borrower's total debt.

### ***Entrance counseling for graduate or professional students (Direct PLUS Loan borrowers) 34 CFR 685.304(a)(7)***

Entrance counseling for graduate or professional student Direct PLUS loan borrowers must:

- (i) Inform the student borrower of sample monthly repayment amounts based on—
  - (A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or
  - (B) The average indebtedness of other borrowers in the same program at the same school;
- (ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;
- (iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized Loan, provide the information specified in §685.301(a)(3)(i)(A) through §685.301(a)(3)(i)(C);\* and
- (iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section. [See the entrance counseling requirements (i)–(xii) beginning in the first column of this page.]

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\* §685.301(a)(3)(i) requires that the counseling provide the borrower with a comparison of—

- (A) The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;
- (B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan and periods when interest accrues on a Direct PLUS Loan; and
- (C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment.

## DL Exit Counseling—Required Elements

### 34 CFR 685.304(b)(4)

Exit counseling must:

- (i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;
- (ii) Review for the student borrower available repayment plan options, including the standard repayment, extended repayment, graduated repayment, income contingent repayment plans, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;
- (iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;
- (iv) Provide information on the effects of loan consolidation including, at a minimum—
  - (A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;
  - (B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;
  - (C) The options of the borrower to prepay the loan and to change repayment plans; and
  - (D) That borrower benefit programs may vary among different lenders;
- (v) Include debt management strategies that are designed to facilitate repayment;
- (vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;
- (vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section [see entrance counseling requirements (i), (ii), and (iv) in the first column of the previous page];
- (viii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under federal law, and litigation;
- (ix) Provide—
  - (A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a Title IV loan; and
  - (B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;\*
- (x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;
- (xi) Inform the student borrower of the availability of Title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain Title IV loan status information;
- (xii) Explain to first-time borrowers—
  - (A) How the borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are determined;
  - (B) The sum of the borrower's subsidized usage periods at the time of the exit counseling;
  - (C) The consequences of continued borrowing or enrollment, including—
    - (1) The possible loss of eligibility for additional Direct Subsidized Loans; and
    - (2) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans;
  - (D) The impact of the borrower becoming responsible for accruing interest on total student debt;
  - (E) That the Secretary will inform the student borrower of whether he or she is responsible for accruing interest on his or her Direct Subsidized Loans; and
  - (F) That the borrower can access NSLDS to determine whether he or she is responsible for accruing interest on any Direct Subsidized Loans;
- (xiii) A general description of the types of tax benefits that may be available to borrowers; and
- (xiv) Require the student borrower to provide current information concerning name, address, Social Security number, references, and driver's license number and state of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

\* Section 485 requires the Secretary (i.e., the Department) to provide "descriptions of federal student assistance programs, including the rights and responsibilities of student and institutional participants," including "information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations" for their loans.

Section 485(d) also refers to information

- to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, finance charges, and samples of loan consolidation profiles.
- concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service.
- on the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization.
- on state and other prepaid tuition programs and savings programs and disseminates such information to states, eligible institutions, students, and parents in departmental publications.

**TEACH Grant Counseling**

Students complete TEACH Grant initial and subsequent counseling and agreement to serve (ATS) processes at <https://StudentLoans.gov>.

Students complete TEACH Grant exit counseling on the NSLDS Student Access site at <https://StudentLoans.gov>.

Schools are responsible for TEACH recipients receiving exit counseling when they are no longer enrolled in the program.

**TEACH Grant exit counseling**

Since TEACH Grants convert to loans if the service requirement is not completed, all grant recipients must receive initial counseling before receiving their first TEACH Grant, and subsequent counseling before receiving each subsequent TEACH Grant. TEACH Grant initial and subsequent counseling must be completed on the Department's StudentLoans.gov website.

Schools that participate in the TEACH Grant Program must also ensure that, all TEACH Grant recipients receive TEACH Grant exit counseling before they cease enrollment at the school where they received TEACH Grants, at a time determined by the school. Schools may provide TEACH Grant exit counseling themselves, or they may require TEACH Grant recipients to complete the counseling on the Department's NSLDS Student Access site [www.nsls.ed.gov/nsls\\_SA](http://www.nsls.ed.gov/nsls_SA).

Your school will receive daily system generated responses from COD when a student has completed TEACH Grant Exit counseling and chosen to notify your school. Your school will also receive a weekly report from COD on all students who have completed TEACH exit counseling and chosen to notify your school.

If a student fails to complete exit counseling electronically on StudentLoans.gov, you must ensure that the counseling is provided either in person, through interactive electronic means, or by mailing written counseling materials (such as the PDF version of the exit counseling program available on the StudentLoans.gov website) to the student's last known address.

For students who are unofficial withdrawals (see *Volume 5, Chapter 1*), you must provide exit counseling within 30 days of learning of the withdrawal.

**Counseling for correspondence and study-abroad students**

If the student has enrolled in a study-abroad program (approved by a U.S. school for credit) or a correspondence or distance learning program and has not previously received an FFEL or Direct Loan at that school, the school must document that the student has completed online entrance counseling that meets FSA requirements or provide entrance counseling information by mail before releasing loan money.

In the case of exit counseling for correspondence programs or study abroad programs, the school may mail or email the borrower written counseling materials within 30 days after the borrower completes the program, with a request that he provide the contact and personal information that would ordinarily have been collected through the counseling process.



### ***Providing additional information***

Your school can take additional steps to counsel students, for example, in developing a budget, estimating need for loans, and planning for repayment. You can reinforce messages to borrowers; with each disbursement you can remind them about the importance of SAP, planning for future employment, and staying in touch with the loan servicer. More ideas for loan counseling are given in the “Sample Default Management and Prevention Plan.”

### **Financial literacy**

You should provide borrowers with counseling at various stages of enrollment, interactive tools to manage debt, repayment options, school contact information, and information about the income potential of occupations relevant to their course of study. You can give this information through a variety of media such as face-to-face counseling, classes, publications, e-tutorials, e-mailed newsletters, and supplements to award letters. You can offer a financial literacy course on a credit or non-credit basis as long as receiving a loan is not contingent upon taking the course. In addition, you should also refer borrowers to the Department’s *Financial Awareness Counseling Tool* (FACT) available at <https://studentaid.ed.gov/sa/prepare-for-college/budgeting/creating-your-budget>

### **At-risk students**

You should identify and provide special counseling for at-risk students, such as those who withdraw prematurely from their educational programs, who do not meet SAP standards, or both.

The most recent sample default plan was an attachment to GEN-05-14 and is also available under “Default Prevention Resources” on the IFAP website.

**Private education loans**

34 CFR 668.14(b)(28) and (29)

Requirements for preferred lender list

34 CFR 601.10

Self-certification form

34 CFR 601.11(d)

Information required to complete the self-certification form

34 CFR 668.14(b)(29)

**Private education loan definition**

The definition of a private education loan given at the beginning of this section is based on the definition given in the Federal Reserve System regulations, which excludes some forms of credit, including:

(1) An extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or

(2) An extension of credit in which the educational institution is the lender if—

(i) The term of the extension of credit is 90 days or less; or

(ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

12 CFR 226.46(b)(5)

Authority: 20 USC 1019, 15 USC 1650(a)(8)

**Private educational lender definition**

15 USC 1650(a)(7)

(A) a financial institution, as defined in section 1813 of Title 12 that solicits, makes, or extends private education loans;

(B) a federal credit union, as defined in section 1752 of Title 12 that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans.

**Definition**

34 CFR 601.2

**Institution-affiliated organization**—one that is directly or indirectly related to a covered institution and that recommends, promotes, or endorses education loans for students attending the covered institution or their families. An institution-affiliated organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization of a covered institution and does not include any lender with respect to any education loan secured, made, or extended by such lender.

**PRIVATE EDUCATION LOANS**

A private education loan is a non-FSA loan that is made to a borrower expressly for postsecondary education expenses, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. (See the sidebar definition for exclusions.)

Private education loans made by schools include Public Health Service Loans, such as Health Professions Student Loans. However, Federal Perkins Loans are not considered to be private educational loans.

If a private education loan is part of a preferred lender arrangement, it is subject to the rules for those arrangements (described later in this section).

**Disclosures required for private education loans**

A school or affiliated organization that provides information regarding a private education loan from a lender to a prospective borrower must provide the following disclosures, even if it does not participate in a preferred lender arrangement.

The private education loan disclosures must

- ♦ provide the prospective borrower with the information required by 15 U.S.C. 1638(e)(1) [12 CFR 226.47(a) in the Federal Reserve System regulations], and
- inform the prospective borrower that she may qualify for FSA loans or other assistance from the FSA programs and that the terms and conditions of an FSA loan may be more favorable than the provisions of private education loans.

The school or affiliate must ensure that information about private education loans is presented in such a manner as to be distinct from information about FSA loans.

The school must, upon the request of the applicant, discuss with her the availability of federal, state, and institutional student financial aid.



### ***Self-certification form for private education loans***

A lender must obtain a signed, completed self-certification form from the loan applicant before initiating a private education loan.

The applicant may obtain a copy of the self-certification form from the private lender and submit it to your school for completion or confirmation. Your school may also, at its option, provide the information needed to complete the form directly to the lender.

If the loan applicant (the student or parent) requests a copy of the self-certification form from your school, you must provide it. He may also request, if the student has been enrolled or admitted to your school, that you complete section 2 before providing him the form. You must do that to the extent that you have the information. Section 2 of the form collects the student's cost of attendance (see *Volume 3, Chapter 2*), the estimated financial assistance (EFA), and the difference between them. The EFA includes, for students who have completed the FAFSA, the amounts of aid that replace the EFC, which you determined according to the rules in *Volume 3, Chapter 7*; it does not include the private education loan(s) that the self-certification form is for.

### ***Schools as private lenders***

Note that if a school solicits, makes, or extends private education loans, it is considered to be a private educational lender that is subject to the Federal Reserve's regulations on private educational lenders.

When the school is the private education lender, it must complete and provide the self-certification form to the loan applicant and subsequently obtain the signed form from the applicant before consummating the private education loan.

In some cases a school may be making more than one private education loan to an applicant. For example, a school may be providing a loan funded by the school (or from donor-directed contributions) and a Public Health Service loan. In such cases, the school can provide one self-certification form to the applicant.

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#### **Self-certification form for private education loans**

Schools must provide the Private Education Loan Applicant Self-Certification (see DCL GEN-13-15) upon request from the loan applicant. A school may post an exact copy of the self-certification form on its website for applicants to download, or it may provide them a paper copy directly.

The self-certification must be printed by the school or lender with black ink on white paper. The typeface, point size, and general presentation of the form may not be changed from the version approved by OMB.

The only changes that may be made to the self-certification form are

- bold type in section headings may be removed, and bold or italic type may be added to the instructions.
- schools and lenders may use any blank spaces at the top, bottom, or sides of the form for bar coding or other school/lender-specific information. However, such space may not be used to include the student's or parent's Social Security number.

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#### **Public health service loans**

Loans made under Titles VII and VIII of the Public Health Service Act are considered to be private education loans, including

- Health Professions Student Loan (HPSL)
- Primary Care Loan (PCL)
- Loans for Disadvantaged Students (LDS)
- Nursing Student Loan (NSL)

These loans are administered by the Health Resources and Services Administration ([www.hrsa.gov](http://www.hrsa.gov)).

## Preferred lender lists

### Preferred lenders

34 CFR 601.10  
12 CFR 226.47  
20 USC 1019a(a)(1)(A) and 1019b(c)  
15 USC 1638(e)(11)

As enacted in  
HEA section 153(a)(2)(A)  
Truth in Lending Act, section 128(e)(11)

### Preferred lender arrangement definition

34 CFR 601.2(b)

### Preferred lender lists

The school is required to

- exercise a duty of care and a duty of loyalty to compile the preferred lender list, without prejudice and for the sole benefit of the school's students and their families; and
- not deny or otherwise impede the borrower's choice of a lender for those borrowers who choose a lender that is not included on the preferred lender list. (This requirement is also included in the school's Code of Conduct; see *Chapter 3*).

For any year in which the school has a preferred lender arrangement, it will at least annually compile, maintain, and make available for students attending the school and the families of such students a list in print or other medium of the specific lenders for private education loans that the school recommends, promotes, or endorses in accordance with such preferred lender arrangement.

The school's preferred lender list must fully disclose

- ♦ why it participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and
- ♦ that the students attending the school (or their families) do not have to borrow from a lender on the preferred lender list; and
- ♦ when available, the information identified on a model disclosure form to be developed by the Department for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families.

The preferred lender list must also prominently disclose the method and criteria used by the school in selecting lenders to ensure that such lenders are selected on the basis of the best interests of the borrowers, including

- ♦ payment of origination or other fees on behalf of the borrower,
- ♦ highly competitive interest rates or other terms and conditions or provisions of FSA loans or private education loans,
- ♦ high-quality servicing for such loans, or
- ♦ additional benefits beyond the standard terms and conditions or provisions for such loans.

The preferred lender list must indicate, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list. If a lender is an affiliate of another lender on the preferred lender list, the listing must describe the details of this affiliation.

### ***Preferred lender disclosures***

For each type of private education loan offered under a preferred lender arrangement, a school (or school-affiliated organization) must disclose

- ♦ the maximum amount of FSA grant and loan aid available to students in an easy-to-understand format,
- ♦ the Truth in Lending information [15 USC 1638(e)(11)] for each type of private education loan offered through a preferred lender arrangement to the school's students and their families, and
- ♦ when available, the information identified on a model disclosure form to be developed by the Department for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families.

The school must disseminate this information on its website and in all informational materials such as publications, mailings, or electronic messages or materials that are distributed to prospective or current students and their families and describe financial aid that is available at an institution of higher education.

### ***Use of institution and lender name***

A school or school-affiliated organization that participates in a preferred lender arrangement regarding private education loans must not agree to the lender's use of its name, emblem, mascot, or logo in the marketing of private education loans to students attending the school in any way that implies that the loan is offered or made by the school or its affiliate instead of the lender. This prohibition also applies to other words, pictures, or symbols readily identified with the school or affiliate.

The school or its affiliate must also ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

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#### **Preferred lenders and code of conduct**

Note that the code of conduct discussed in *Chapter 3* prohibits school staff from steering borrowers to particular lenders or delaying loan certifications.

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#### **Truth in Lending Act**

Truth in Lending Act section 128(e)(1)

15 USC 1638(e)(1)

Federal Reserve System Truth in Lending regulations (as published on August 14, 2009)

12 CFR 226.46 through 226.48.

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#### **Use of school or lender name**

34 CFR 612

20 USC 1019a(a)(2)–(a)(3)

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#### **Definition**

34 CFR 601.2

**Institution-affiliated organization**—one that is directly or indirectly related to a covered institution and that recommends, promotes, or endorses education loans for students attending the covered institution or their families. An institution-affiliated organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization of a covered institution and does not include any lender with respect to any education loan secured, made, or extended by such lender.

## MISREPRESENTATION

### Misrepresentation

34 CFR Subpart F

Misrepresentation

34 CFR 668.71(c)

Misrepresenting educational program

34 CFR 668.72

Misrepresenting financial charges

34 CFR 668.73

Employability of graduates

34 CFR 668.74

Relationship with the Department of Education

*Misrepresentation* is defined as a false, incorrect, or misleading statement made directly or indirectly to a student, prospective student, any member of the public, an accrediting agency, a state agency, or the Department.

A *misleading statement* includes any statement that has the likelihood or tendency to mislead. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. A statement may still be misleading, even if it is true on its face.

A statement is any communication made in writing, visually, orally, or through other means. This definition applies to statements made by an eligible school, the school's representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services.

Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the school required the student to make such an endorsement or testimonial to participate in a program.

A school, one of its representatives, or a related party (see above) engages in *substantial misrepresentation* when it does so about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentation is defined as any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment. Substantial misrepresentations are prohibited in all forms, including those made in any advertising or promotional materials or in the marketing or sale of courses or programs of instruction offered by the institution. A school is responsible for the harm caused by its misrepresentations, even if such misrepresentations cannot be attributed to institutional intent or knowledge and are the result of inadvertent or innocent mistakes.

### Sanctions

If the Department determines that an eligible institution has engaged in substantial misrepresentation, it may

- revoke the eligible institution's program participation agreement if the institution is provisionally certified under 34 CFR 668.13(c);
- impose limitations on the institution's participation in the FSA programs if the institution is provisionally certified under 34 CFR 668.13(c);
- deny participation applications made on behalf of the institution; or
- initiate a proceeding against the eligible institution under subpart G of 34 CFR 668.

## Misrepresentation Regulations

### 34 CFR 668.72 Nature of educational program

Misrepresentation concerning the nature of an eligible institution's educational program includes but is not limited to false, erroneous, or misleading statements concerning—

- (a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;
- (b)(1) Whether a student may transfer course credits earned at the institution to any other institution;
- (2) Conditions under which the institution will accept transfer credits earned at another institution;
- (c) Whether successful completion of a course of instruction qualifies a student—
  - (1) For acceptance to a labor union or similar organization; or
  - (2) To receive, to apply to take, or to take the examination required to receive, a local, state, or federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the states in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;
- (d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;
- (e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—
  - (1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or
  - (2) Governmental officials for governmental employment;
- (f) Its size, location, facilities, or equipment;
- (g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;
- (h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;
- (i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;
- (j) The availability of part-time employment or other forms of financial assistance;
- (k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;
- (l) The nature or extent of any prerequisites established for enrollment in any course;
- (m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;
- (n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate state educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate state educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or
- (o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

(Authority: 20 U.S.C. 1094)

### 34 CFR 668.73 Nature of financial charges

Misrepresentation concerning the nature of an eligible institution's financial charges includes but is not limited to false, erroneous, or misleading statements concerning—

- (a) Offers of scholarships to pay all or part of a course charge;
- (b) Whether a particular charge is the customary charge at the institution for a course;
- (c) The cost of the program and the institution's refund policy if the student does not complete the program;
- (d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or
- (e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(Authority: 20 U.S.C. 1094)

### 34 CFR 668.74 Employability of graduates

Misrepresentation regarding the employability of an eligible institution's graduates includes but is not limited to false, erroneous, or misleading statements concerning—

- (a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;
- (b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;
- (c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;
- (d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including but not limited to the use of phrases such as "Men/women wanted to train for \* \* \*," "Help Wanted," "Employment," or "Business Opportunities";
- (e) Government job market statistics in relation to the potential placement of its graduates; or
- (f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

(Authority: 20 U.S.C. 1094)

## REPORTING ON FOREIGN SOURCES AND GIFTS

### Foreign gifts references

Higher Education Act: Sec. 117  
Reminder to schools of requirements for reporting foreign gifts.  
DCL GEN-04-11, Oct. 4, 2004.

### Definitions

A **foreign source** is

- a foreign government, including an agency of a foreign government;
- a legal entity created solely under the laws of a foreign state or states;
- an individual who is not a citizen or national of the United States; and
- an agent acting on behalf of a foreign source.

A **gift** is any gift of money or property.

A **contract** is any agreement for the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of either of the parties.

### Restricted or conditional gift or contract

A *restricted or conditional gift or contract* is any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions regarding

- the employment, assignment, or termination of faculty;
- the establishment of departments, centers, research or lecture programs, or new faculty positions;
- the selection or admission of students; or
- the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

Federal law requires most 2-year and 4-year postsecondary schools (whether or not they are eligible to participate in the FSA programs) to report ownership or control by foreign sources and contracts with or gifts from the same foreign source that, alone or combined, have a value of \$250,000 or more for a calendar year.

### Who must report

A school (and each campus of a multi-campus school) must report this information if it

- ♦ is legally authorized to provide a program beyond the secondary level within a state;
- ♦ provides a program that awards a bachelor's degree or a more advanced degree, or provides at least a two-year program acceptable for full credit toward a bachelor's degree;
- ♦ is accredited by a nationally recognized accrediting agency; and
- ♦ is extended any federal financial aid (directly or indirectly through another entity or person) or receives support from the extension of any such federal assistance to the school's sub-units.

### Timing and content of submission

A school must report this information by January 31 or July 31 (whichever is sooner) after the date of receipt of the gifts, date of the contract, or date of ownership or control. The January 31 report should cover the period July 1–December 31 of the previous year, and the July 31 report should cover January 1–June 30 of the same year.

### Information to be reported

Using the E-App, you must report the following information in Section K, question 71:

- ♦ For gifts received from or contracts entered into with a foreign government, the name of the country and the aggregate amount of all gifts and contracts received from each foreign government



- ◆ For gifts received from or contracts entered into with a foreign source other than a foreign government, the name of the foreign state to which the contracts or gifts are attributable and the aggregate dollar amount of the gifts and contracts attributable to a particular country. (The country to which a gift or a contract is attributable is the country of citizenship or, if unknown, the principal residence for a foreign source who is a natural person and the country of incorporation or, if unknown, the principal place of business for a foreign source that is a legal entity.)
- ◆ In the case of a school that is owned or controlled by a foreign entity—the identity of the foreign entity, the date on which the foreign entity assumed ownership or control, and a description of any substantive changes to previously reported ownership or control, or institutional program or structure resulting from the change in ownership or control
- ◆ For restricted or conditional gifts received from, or restricted or conditional contracts entered into with a foreign government—the name of the foreign country, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions or restrictions
- ◆ For restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign person—the citizenship (or, if unknown, the principal residence) of that person, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions and restrictions
- ◆ For restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign source (legal entity other than a foreign state or individual—the country of incorporation or, if unknown, the principal place of business for that foreign entity), the amount of the gift or contract, date of the gift or contract, and a description of the conditions and restrictions

Any conditions or restrictions on the foreign gift must be reported in question 69.

Once you've entered the appropriate information about the foreign gift, contract, or ownership and control, go to Section L to complete the signature page. You may then submit your report.

### Where to report foreign gift information

Foreign gift, contract, and ownership or control reports must be submitted to the school participation divisions using FSA's electronic application (E-App) at ([www.eligcert.ed.gov](http://www.eligcert.ed.gov)).

Go to Section K, Question 71, and enter the appropriate information about the foreign gift, contract, or ownership and control, then go to Section L to complete the signature page. You may then submit your report.

### Penalties

If a school fails to comply with the requirements of this law in a timely manner, the Department is authorized to undertake a civil action in federal district court to ensure compliance. Following a knowing or willful failure to comply, a school must reimburse the U.S. Treasury for the full cost of obtaining compliance.

### For help and alternative reporting

Contact your state's school participation division. Go to <http://ifap.ed.gov> and click Help > Contact Information > Federal Student Aid Offices > School Participation Division.



### *Alternative reporting*

In lieu of the reporting requirements listed

- ♦ If a school is in a state that has substantially similar laws for public disclosure of gifts from, or contracts with, a foreign source, a copy of the report to the state may be filed with the Department. The school must provide the Department with a statement from the appropriate state official indicating that the school has met the state requirements.
- ♦ If another department, agency, or bureau of the executive branch of the federal government has substantially similar requirements for public disclosure of gifts from or contracts with a foreign source, the school may submit a copy of this report to the Department.

## ANTI-LOBBYING PROVISIONS

### *Prohibition on use of FSA funds*

#### **Prohibition on use of FSA funds**

HEOA 2008 section 119  
(no corresponding HEA section)  
Effective date: August 14, 2008

FSA funds may not be used to pay any person for trying to influence

- ♦ a member of Congress or an employee of a member of Congress, or
- ♦ an officer or employee of Congress or any agency.

#### **Anti-lobbying certification and disclosure**

Section 319 of Pub. L. 101-121, enacted October 23, 1989, amended title 31, United States Code, by adding a new section 1352, entitled “Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions,” commonly known as the Byrd Anti-Lobbying Amendment.

As a result of that legislation, the Office of Management and Budget (OMB) issued interim final common regulations on February 26, 1990, for implementing and complying with the law. See 34 CFR Part 82.

This prohibition applies to the making of a federal grant or loan, awarding federal contracts, and entering into federal cooperative agreements, as well as to the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.

In addition, FSA funds may not be used to hire a registered lobbyist or to pay any person or entity for securing an earmark. Schools receiving FSA funds will have to certify their compliance with these requirements annually.

### **Campus-Based disclosure**

If a school that receives more than \$100,000 in Campus-Based funds has used *non-federal* funds to pay any person for lobbying activities in connection with the Campus-Based Programs, the school must submit a disclosure form (Standard Form LLL) to the Department. The school must update this disclosure at least annually and when changes occur.

The disclosure form must be signed by the chief executive officer (CEO). A school is advised to retain a copy in its files.

The school must require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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#### **ACA may not be used for association membership**

A school may not use its administrative cost allowance (ACA) to pay for its membership in professional associations (such as the National Association of Student Financial Aid Administrators, the National Association of College and University Business Officers, etc.), regardless of whether the association engages in lobbying activities.

### **VOTER REGISTRATION**

If a participating school is located in a state that requires voter registration prior to election day and/or does not allow registration at the time of voting, then the school must make a good-faith effort to distribute voter registration forms to its students. This requirement was included in the National Voter Registration Act of 1993 (also known as the “NVRA” or “motor voter law”).

The Department of Justice identified that the requirements of the NVRA apply to 44 states and the District of Columbia. Six states—Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming—are exempt from the NVRA. Likewise, the territories are not covered by the NVRA (Puerto Rico, Guam, Virgin Islands, American Samoa).

The school must make the voter registration forms widely available to its students and must individually distribute the forms to its degree- or certificate-seeking (FSA-eligible) students. The school can mail paper copies, or it may send an electronic message to each student with a voter registration form or with an Internet address where the form can be downloaded. The message must be devoted exclusively to voter registration.

In applicable states, schools must request voter registration forms from the state 120 days prior to the state’s deadline for registering to vote. This provision applies to general and special elections for federal office and to the elections of governors and other chief executives within a state. If a school does not receive the forms within 60 days prior to the deadline for registering to vote in the state, it is not liable for failing to meet the requirement during that election year.

